

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DONNA DIBETTA VIRGILLO

Plaintiff,

vs.

KENNETH YEOMANS
AND XRS CORPORATION,

Defendants.

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CIVIL ACTION NO.
4:14-cv-00051

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), Defendants XRS Corporation and Kenneth Yeomans ("Defendants") file their Notice of Removal, hereby removing this action from the 152nd Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Donna Dibetta Virgillo ("Plaintiff"), and Defendants Kenneth Yeomans and XRS Corporation and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff is a Texas citizen. Defendants are not citizens of Texas. Defendants are citizens of Massachusetts and Minnesota.

I.
INTRODUCTION

1. Plaintiff filed her Original Petition on December 3, 2013 in the 152nd Judicial District Court for Harris County, Texas. Plaintiff's Petition asserts several causes of action against Defendants Kenneth Yeomans and XRS Corporation, arising out of an alleged car collision, for which Plaintiff seeks recovery of compensatory damages in excess of \$75,000.

2. Defendant XRS Corporation was served with a citation and a copy of Plaintiff's Original Petition on December 11, 2013 through the Secretary of State as its agent of service. *See*

Ex. 1. According to the Court records on file with the State District Court, Kenneth Yeomans has not been served. Plaintiff's counsel requested citation and picked up to privately serve on the Chairman of the Texas Transportation Commission as his agent, but the docket does not reflect a return of service. *See* Ex. 1. This Notice of Removal is being filed within thirty (30) days of service of the Citation and Original Petition on XRS Corporation, and is thus timely under 28 U.S.C. §1446(b).

II.

GROUND FOR REMOVAL

3. Federal diversity jurisdiction exists over this removed action pursuant to 28 U.S.C. § 1332 because all relevant parties are diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. There Is Complete Diversity Among the Parties.

4. Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a).

5. Plaintiff is a citizen of Texas.

6. Defendant XRS Corporation is a corporation organized and incorporated under the laws of Minnesota and maintains its principal place of business in Eden Prairie, Minnesota. Consequently, XRS Corporation is a citizen of the State of Minnesota for purposes of diversity jurisdiction.

7. Defendant Kenneth Yeomans is an individual residing in Salem, Massachusetts. Consequently, Kenneth Yeomans is a citizen of the State of Massachusetts for purposes of diversity jurisdiction. In addition to the undersigned counsel of record, Edward A. Mattingly of the Mattingly Law Firm also represents Mr. Yeomans at present and consents to this removal.

B. The Amount In Controversy Exceeds \$75,000.

9. Plaintiff's Original Petition seeks a total amount within the range of \$500,000 and \$2,500,000. The damages claimed exceed the \$75,000 jurisdictional threshold. In this regarding, the damages Plaintiff claims in her complaint, if apparently claimed in good faith are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938).

10. Considering Plaintiff's claim to recover actual damages in excess of \$500,000, it is apparent from the face of Plaintiff's Original Petition that the amount in controversy in this action, exclusive of interest and costs, is likely to exceed \$75,000.

**III.
VENUE**

11. Venue for removal proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the Texas State District Courts of Harris County, Texas, the forum in which the removed action was previously pending.

**IV.
PROCEDURAL REQUIREMENTS**

13. Pursuant to 28 U.S.C. §1446(a) and Southern District of Texas Local Rule 81, the Notice of Removal has the following attachments:

- Exhibit 1: All executed process in the case;
- Exhibit 2: Pleadings asserting causes of action and all answers to such pleadings;
- Exhibit 3: All orders signed by the state court judge (None);
- Exhibit 4: The docket sheet;
- Exhibit 5: An index of matters being filed; and
- Exhibit 6: A list of all counsel of record, including addresses, telephone numbers and parties represented.

14. Pursuant to 28 U.S.C. § 1446(d), written notices of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

15. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the District Clerk for the 152nd Judicial District Court of Harris County, Texas promptly after filing of same.

V.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant XRS Corporation and Kenneth Yeomans respectfully request that the above-captioned action now pending in the 152nd Judicial District Court of Harris County, Texas be removed to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully Submitted,

/s/ Kurt W. Meaders
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ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January 2014, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Southern District of Texas, using the CM/ECF system, which will send notification of such filing to the following:

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